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## Judiciary Committee

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### HI 594

**Title:** Requiring criminal and public safety background checks for gun sales and transfers.

**Brief Description:** Gun sales background check.

**Sponsors:**

**Brief Summary of Bill**

- Provides that all firearms sales or transfers in whole or in part in Washington are subject to background checks unless specifically exempted by federal or state law.
- Requires firearm sales or transfers between unlicensed persons to be completed by a licensed dealer according to specified procedures.
- Establishes penalties and exemptions, and makes other changes to provisions governing firearms transactions.

**Hearing Date:** 1/28/14

**Staff:** Edie Adams (786-7180).

**Background:**

Under state and federal laws, firearms dealers (dealers) are required to have licenses in order to sell firearms. Under state law, a dealer includes anyone engaged in the business of selling firearms who has or is required to have a federal dealer's license. A person is not required to have a dealer's license in order to sell firearms if the person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

State and federal law require dealers to conduct background checks for transfers of firearms to unlicensed persons. Neither state nor federal law requires background checks for firearms sales or transfers by persons who are not dealers. However, it is unlawful for a person to transfer a

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firearm to another person whom he or she has reasonable cause to believe is ineligible to possess a firearm.

#### Federal Background Check Requirements.

Under the federal Brady Act, a dealer must, with few exceptions, conduct a background check on all firearm sales or transfers to unlicensed persons to determine whether the purchaser is prohibited from possessing a firearm. This background check is conducted through the National Instant Criminal Background Check System (NICS).

A NICS check typically returns an immediate response. However, if the NICS system response is delayed, the dealer may deliver the firearm to the purchaser three business days after initiating the NICS check if the dealer has not received a notification from NICS in that time that the purchaser is ineligible to possess a firearm.

#### State Background Check Requirements.

State law regulates the sale or transfer of pistols by dealers, but does not regulate the sale transfer of long guns. A purchaser must fill out an application containing specified information relating to the purchaser and the firearm being purchased. The dealer contacts the local sheriff or police department to conduct the NICS check and a state background check for all pistol transfers where the purchaser does not have a valid concealed pistol license (CPL). If the purchaser has a valid CPL, local law enforcement will conduct a state background check, and the dealer will conduct the NICS check, if required.

A dealer may not deliver a pistol to a prospective purchaser until one of the following occurs:

- the purchaser produces a valid concealed pistol license;
- the dealer is notified by the chief of police or sheriff that the purchaser is eligible to possess the firearm and the application is approved; or
- five business days have elapsed since the application was received by the law enforcement agency (up to 60 days if the person does not have a Washington driver's license or identification or has not resided in the state for the previous 90 days).

A dealer must deliver the pistol to the purchaser following the specified time periods unless the law enforcement agency has notified the dealer of an investigative hold. A record of the pistol transfer must be retained by the dealer for six years, a copy of which must be submitted to the Department of Licensing (DOL), which maintains this information in its firearms database.

#### **Summary of Bill:**

All firearms sales or transfers are subject to background checks unless specifically exempted by federal or state law. This requirement applies to all sales or transfers in whole or in part in Washington, including sales and transfers through a dealer, at gun shows, online, and between unlicensed persons. "Transfer" means the intended delivery of a firearm to another person without consideration of payment or promise of payment, including gifts and loans.

Any sale or transfer of a firearm where neither party is a dealer must be completed through a dealer according to the following requirements:

- The seller or transferor must deliver the firearm to the dealer. The seller or transferor may remove the firearm from the dealer's premises while the background check is being

conducted, but the firearm must be returned to the dealer prior to completing the transaction.

- The purchaser or transferee must complete and sign all federal, state, and local forms needed for processing the background check.
- The dealer must process the transaction by complying with all federal and state laws that would apply if the dealer were selling or transferring the firearm from the dealer's inventory.
- If the purchaser or transferee is ineligible to possess a firearm, the dealer must return the firearm to the seller or transferor.

The dealer may charge a fee for facilitating a sale or transfer in an amount that reflects the fair market value of the administrative costs and efforts incurred.

A dealer may not deliver a firearm to a purchaser or transferee, except as otherwise authorized, until the earlier of:

- the completion of all required background checks if the purchaser or transferee is not ineligible under federal or state law from possessing a firearm; or
- ten business days have passed since the dealer requested the background check, except this period is 60 days for a pistol transfer if the purchaser or transferee does not have a valid Washington driver's license or identification card or has not been a resident for the previous 90 days.

*Exemptions.* The following are exempt from the background check requirements established in the act:

- gifts between family members;
- antique firearms;
- law enforcement and corrections agencies and officers, United States marshals, members of the armed forces or National Guard, or federal officials, if in connection with employment or official duties;
- gunsmiths for the service, repair, or return of the firearm;
- temporary transfers where the transfer is:
  - necessary to prevent imminent death or great bodily harm to the transferee, if the transfer lasts only as long as needed and the transferee is not prohibited from possessing firearms;
  - between spouses or domestic partners;
  - at an established shooting range authorized by the local governing body;
  - at a lawful organized firearm competition or performance;
  - to a person under 18 years of age for lawful hunting, sporting, or educational purposes while under direct supervision of a responsible adult; or
  - while legally hunting if the transferee has completed all required training, holds all required licenses or permits, and is not prohibited from possessing a firearm;
- acquisition of a firearm other than a pistol by inheritance, or acquisition of a pistol by inheritance within the preceding 60 days, after which time the person must either transfer the pistol or notify the DOL that the person is retaining the pistol.

*Pistol Deliveries by Dealers.* The current statute governing a dealer's delivery of a pistol is amended to incorporate a 10-day (rather than five-day) period after which a pistol may be delivered even if the background check has not been completed. The current requirement that a pistol be securely wrapped and unloaded when delivered is deleted.

*Penalties.* A person who knowingly violates the background check requirements established in the act is guilty of a gross misdemeanor for a first offense, and a class C felony for each subsequent offense. Each firearm sold or transferred in violation of the act's background check requirements is a separate offense. A class C felony conviction for this offense is included in the definition of "serious offense" under the firearms chapter.

*Other Provisions.* A resident of Washington who purchases a long gun in another state is subject to the background check requirements of the act if any part of the transaction occurs in Washington, including Internet sales. A resident of another state who purchases a long gun in Washington is subject to the state's procedures and background check requirements.

The DOL is given authority to adopt rules to implement the act. The DOL must report any violation of the firearms chapter by a licensed dealer to the ATF. In addition, the DOL may, after notice and a hearing, revoke the license of any licensed dealer who violates the chapter.

The retail sales tax does not apply to the sale or transfer of a firearm between two unlicensed persons if they have complied with all required background checks. A licensed dealer who facilitates the transfer of a firearm between unlicensed persons is not obligated to collect a use tax on the transaction.

**Appropriation:** None.

**Fiscal Note:** Available.